



Making San Francisco Bay Better

May 14, 2009

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

SUBJECT: Revised Notice of Preparation of an Environmental Impact Report and
Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Ms. Brown:

On February 13, 2009, the State Clearinghouse, Governor's Office of Planning and Research, received the Revised Notice of Preparation (NOP) of an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Sacramento-San Joaquin Bay-Delta Conservation Plan (BDCP). Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Department of Water Resources (DWR), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and the U.S. Bureau of Reclamation (Reclamation) are preparing a joint EIR/EIS that will include analysis of improved water conveyance infrastructure and other habitat conservation measures that will be developed to advance the goals and objectives of the BDCP. DWR will serve as the State lead agency and the California Department of Fish and Game will be a responsible and trustee agency under CEQA. Reclamation is the lead agency and NMFS and FWS are co-lead agencies under NEPA.

Although the San Francisco Bay Conservation and Development Commission (Commission) itself has not reviewed the NOP, the staff comments discussed below are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act, the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management plan for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

The Commission staff supports the BDCP's goal of enhancing and restoring ecosystem processes and functions, including seasonal floodplain habitat, subtidal and intertidal habitat, hydrologic conditions, and salinity within the Delta estuary, as well as reducing direct losses of fish and other aquatic organisms. The staff also supports the BDCP's purpose of providing for the conservation of threatened and endangered species in the Delta and improving the reliability of the water supply within a stable regulatory framework. However, the staff believes it will be critical for the BDCP agencies to coordinate closely with other Bay and Delta initiatives, such as the *Delta Vision Strategic Plan* recommendations, the Delta Risk Management Strategy, and other ongoing and planned habitat restoration efforts in the estuary.

Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above Mean Sea Level or the extent of tidal wetland vegetation; all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

The proposed project would cross the eastern limit of the Commission's Bay jurisdiction, which is defined by a line across the Sacramento River between Stake Point and Simmons Point, extending northeast to the mouth of Marshall Cut. A section of the proposed project would be located in portions of the Suisun Marsh and Suisun Bay within Solano County and, thus, also in the Commission's primary management jurisdiction of the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition to any needed permits under its state authority, federal actions, permits, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

From reviewing the NOP, it appears that the proposed project may include the following activities within the Commission's Bay and Marsh jurisdictions: (1) maintenance, improvement or changes in operation of water management facilities, such as the Suisun Marsh Salinity Control Gates; (2) habitat restoration; and (3) new power lines and rights of way. In addition, new water conveyance facilities and changes in operation of existing facilities outside the Commission's jurisdiction in the Delta have the potential to alter circulation patterns, affect water quality, or result in other impacts in the Commission's Bay and Marsh jurisdictions.

Fresh Water Inflow. The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh and provide additional guidance regarding legal requirements promulgated by the State Water Resources Control Board.

The Bay Plan recognizes the importance of fresh water inflows to the ecosystem of the Bay. Bay Plan findings state that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

The Bay Plan's Fresh Water Inflow policies state, in part:

Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....

High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....

The impact of diversions of fresh water inflow into the Bay should be monitored by the State Water Resources Control Board, which should set standards to restore historical levels (1922-1967) of fish and wildlife resources. The Bay Commission should cooperate with the State Board and others to ensure that adequate fresh water inflows to protect the Bay are made available.

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....

Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the EIR/ EIS include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay.

The *Delta Vision Strategic Plan* (October 2008) included recommendations regarding adequate flows for the Bay-Delta ecosystem. Strategy 3.4 calls for restoring Delta flows and channels to support a healthy Delta estuary, including:

- Flows to produce sufficient volumes of open water habitat of the appropriate water quality, including salinity, temperature, and concentrations of dissolved oxygen and contaminants, e.g., adequate low salinity fall habitat for the Delta smelt;
- Flows to reduce fish entrainment in pumps and other water facilities; and
- Flows to provide adequate fish migration cues, e.g., high flows that trigger migration of salmonids.

The EIR/ EIS should analyze the flow recommendations in the *Delta Vision Strategic Plan* and other recent publications in order to determine the appropriate flows needed support ecosystem processes as well as the recovery of individual species in the Bay and Suisun Marsh.

Wetland Restoration. Much of the Bay's historic tidal wetlands have been lost, including 80 percent of tidal marshes and 40 percent of tidal flats. The Bay Plan and Marsh Plan encourage wetland restoration and enhancement.

The Bay Plan's policies state, in part:

Where and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife. As recommended in the *Baylands Ecosystem Habitat Goals* report, around 65,000 acres of area diked from the Bay should be restored to tidal action....

If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species. This type of purchase should have a high priority for any public funds available.

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the EIR/ EIS include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay.

The Bay Plan's dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the BDCP agencies encourage the coordination of use of dredged material in the Bay and Delta as part of a regional sediment management strategy.

The Commission has a long and successful history of managing natural resources in the Suisun Marsh. The Commission is currently participating in the Suisun Marsh Charter Group to develop a new Habitat Management, Preservation and Restoration Plan for Suisun Marsh. Our priorities for the new plan include enhancing seasonal and managed wetlands that provide essential wintering habitat for waterfowl of the Pacific Flyway, supporting tidal restoration, and supporting maintenance of Suisun Marsh levees.

Suisun Marsh Protection Plan policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

The Suisun Resource Conservation District should be empowered to improve and maintain exterior levee systems as well as other water control facilities on the privately owned managed wetlands within the primary management area.

Our staff urges the BDCP agencies to incorporate Marsh Plan and Bay Plan policies, as well as the information in the Commission's draft staff report on climate change, as it develops the BDCP in order to ensure that wetland restoration in the Bay and Delta are coordinated to maximize public benefits.

Climate Change. Climate change and accelerating sea level rise could result in devastating impacts to the Bay and Delta. As the Commission has noted in the draft staff report *Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline* (April 2009):

Salinity increases due to climate change may dramatically impact the brackish and freshwater marshes found in Suisun Marsh....

Since brackish and freshwater tidal marshes tend to be more productive and provide habitat for a greater diversity of plants than salt marshes, elimination of these valuable wetlands or their conversion to salt marshes could reverberate throughout the food

web and reduce the habitat available to rare and endangered species (Callaway et al. 2007, Newcombe and Mason 1972, Baye et al. 2000, Lyons et al., 2005).

Efforts to use water control structures, such as salinity gates, to artificially reduce salinity in Suisun Marsh in dry years are likely to become increasingly difficult in the face of climate change. The Suisun Marsh Salinity Control Gates restrict the flow of higher salinity water from incoming tides and retain [lower salinity] Sacramento River water from the previous outgoing tide. An eastward shift of the salinity gradient caused by sea level rise will likely reduce opportunities for importing freshwater into the Suisun Marsh.

We therefore request that the EIR/EIS evaluate the proposed project in relation to potential climate change impacts on the Bay and Delta, particularly on the brackish wetlands of the Suisun Marsh.

Multiple Levee Failures. The Delta Risk Management Strategy and other recent publications have explored the potential impacts of multiple levee failures and the simultaneous flooding of several Delta islands. These analyses focused on the disruption of water exports and economic consequences. As the DRMS report states, "Impacts to aquatic species were not quantified in the DRMS Project and require further study." Similarly, impacts to water quality were not quantified in the DRMS Project. The EIR/EIS should address the potential impacts of multiple levee failures on the ecosystems of Suisun Marsh and the Bay and how those impacts might vary in different conveyance and water project operations scenarios.

Minimize Harmful Effects to the Bay. The proposed project would need to be consistent with all applicable Bay Plan policies. Therefore, the EIR/EIS should address other applicable Bay Plan policies, including a discussion about the Commission's regulatory requirements governing the protection of the Bay's natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be "conserved, restored, and increased." Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in a "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts in these areas.

The EIR/EIS should analyze how the entire project, not just the portion within the Commission's permit jurisdiction, will affect the hydrology, sediment dynamics, water quality and biological resources of the Bay. As mentioned above, it should include analysis of climate change impacts, including the potential impacts of sea level rise, precipitation patterns, and changes in air and water temperature. It should also analyze cumulative impacts, including the potential impacts of other projects being planned for the Bay-Delta estuary and its watershed, such as dam construction, habitat restoration, levee repairs and upgrades, and the deepening of the Stockton and Sacramento Ship Channels. The EIR/EIS should discuss the Commission's regulatory authority governing the protection of the Bay's and the Marsh's natural resources and habitats.

Water Quality. Pursuant to the Commission's water quality policies in the Bay Plan, pollution in the Bay's water "should be prevented to the greatest extent feasible." Further, in considering this project, the Commission would need to consult with and base its decision on the San Francisco Bay Regional Water Quality Board's evaluation of and advice on the proposed project and any potential water quality impacts. Therefore, the Commission encourages the project proponents to continue conducting early consultation with and working to obtain all necessary authorization from the Regional Board to aid the Commission in determining whether the project would adversely impact the Bay's water quality. The EIR/EIS should analyze the impacts of the project on salinity, temperature and concentrations of dissolved oxygen and contaminants in the Bay.

Utilities and Improvements. The Marsh Plan policies on utilities, facilities and transportation state, in part, that "New electric power transmission utility corridors should be located at least one-half mile from the edge of the Marsh." In light of this policy, the EIR/EIS should: (1) clearly show the location of any proposed new power lines in relation to the boundary of the Suisun Marsh; (2) identify any potential project-related impacts to wetlands in the Marsh and measures for mitigating these effects; and (3) provide a construction schedule for any work affecting wetland area in the Marsh.

Mitigation. In the event that the proposed project would result in adverse environmental impacts that cannot be avoided, the EIR/EIS should discuss mitigation measures. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henver adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

Coastal Zone Management Act. We request that the EIR/EIS indicate that under CZMA (16 USC 1456(c) and (d)) the Commission is authorized to review any federal actions, permits, licenses and grants affecting any land or water use or natural resources within the Commission's coastal jurisdiction (i.e., San Francisco Bay and Suisun Marsh) for consistency with the Commission's laws and regulations.

Thank you for the opportunity to comment on this NOP. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicah@bcdcc.ca.gov.

Sincerely,



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JH/rca

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